

Message Text

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FM USMISSION USBERLIN

TO AMEMBASSY BONN

INFO SECSTATE WASHDC 1901

AMEMBASSY BERLIN

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

USMISSION NATO

C O N F I D E N T I A L USBERLIN 0138

E.O.11652: GDS

TAGS: PGOV, PFOR, WB, GW, UR

SUBJECT: SOVIET PROTEST ON ZEHLENDORF ELECTION
DECISION

REF: USBERLIN 105

1. TAKING ADVANTAGE OF CALL BY ALLIED CHAIRMAN (UK)
LIAISON AND PROTOCOL OFFICER ON OTHER BUSINESS
JANUARY 23, SOVIET EMBASSY OFF TRENDELEV MADE FOLLOWING
RAMBLING STATEMENT (BRITISH TRANSLATION) INTENDED TO REBUT ALLIE
ANSWER OF JANUARY 16 TO EARLIER SOVIET PROTEST: BEGIN TEXT:
THE SOVIET SIDE CANNOT AGREE WITH THE STATEMENT THAT
BY THE ORDER OF THE THREE ALLIES/BK/9(50)75 OF THE 29TH
AUGUST 1950 IN WHICH THE ALLIES APPROVED THE BERLIN
(WEST) CONSTITUTION SIMULTANEOUS APPROVAL WAS GIVEN
TO THE PROVISIONS OF ARTICLE 87 OF THIS CONSTITUTION.
WE SHOULD LIKE IN THIS CONNECTION TO EMPHASIZE THAT
THE SOVIET EMBASSY BASED ITS STATEMENT TO THE
THREE ALLIES ON THE 20TH NOVEMBER 1975, CHIEFLY ON THE
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FACT THAT IN ACCORDANCE WITH THE QUADRIPARTITE AGREE-

MENT OF THE 3RD SEPTEMBER 1971 THE PROVISIONS OF THE BASIC LAW OF THE FRG AND THE CONSTITUTION IN FORCE IN THE WESTERN SECTORS OF BERLIN WHICH DO NOT AGREE WITH THE ABOVE(I.E., WITH THE PRINCIPLE, ACCORDING TO WHICH THESE SECTORS ARE NOT A CONSTITUENT PART OF THE FRG AND WOULD NOT BE GOVERNED BY IT) HAVE BEEN SUSPENDED AND CONTINUE NOT TO BE IN EFFECT.

THE REPLY OF THE THREE ALLIES MADE ON THE 16TH JANUARY 1976 IGNORES THE PROVISIONS OF THE QUADRIPARTITE AGREEMENT, WHICH, IN THE OPINION OF THE SOVIET EMBASSY IS ESSENTIAL TO AN APPROACH AND EXAMINATION OF THE QUESTION UNDER CONSIDERATION.

IN ADDITION IF DIRECT REFERENCE IS MADE TO THE LEGAL DOCUMENTS MENTIONED IN THE REPLY OF THE THREE ALLIES, EVEN THERE IN ARTICLE 87 OF THE WEST BERLIN CONSTITUTION IT IS STATED THAT THE PROVISIONS OF THE BASIC LAW OF THE FRG ARE IN FORCE, ONLY IN SO FAR THAT THEY ARE NOT SUBJECT TO RESTRICTIONS. THE FACT THAT THEY ARE SUBJECT TO SUCH A RESTRICTION DERIVES FROM THE BK/O TEST OF THE 29.8/1950, WHERE IT SAYS THAT BERLIN (WEST) POSSESSES NONE OF THE ATTRIBUTES OF A 12TH LAND OF THE FRG AND AS A RESULT OF THIS THE PROVISIONS OF THE BASIC LAW OF THE FRG CANNOT BE IN FORCE IN IT.

THE JURIDICAL SIGNIFICANCE OF THE PROVISIONS OF THE QUADRIPARTITE AGREEMENT OF THE 3. 9 1971 AND OF BK/O (50)75 OF THE 29TH AUGUST 1950 OF THE THREE ALLIES IS THEREFORE BASED MAINLY ON THE FACT THAT THE BASIC LAW OF THE FRG CANNOT UNDER ANY CIRCUMSTANCES AUTOMATICALLY PREVAIL OVER THE PROVISIONS OF THE BERLIN (WEST) CONSTITUTION. MOREOVER, THE STATEMENT IN BK/O(50)75 OF THE 29.8. 1950 THAT THE PROVISIONS OF THE BERLIN (WEST) CONSTITUTION - ARTICLE 87- CAN BE APPLIED ONLY WHEN IT IS NECESSARY TO PREVENT A CONFLICT BETWEEN THIS (BASIC) LAW AND THE (WEST) BERLIN ONLY IF THE CHAMBER OF DEPUTIES ADOPTS THE RELEVANT (WEST BERLIN) LAW.

THE DIRECT APPLICATION IN BERLIN(WEST) OF THE BASIC LAW OF THE FRG, AS TOOK PLACE IN PARTICULAR IN THE CASE OF THE JUDGMENT DELIVERED BY THE ELECTORAL

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REVIEW COURT, IS FOR THESE REASONS ABSOLUTELY INADMISSABLE.

IN THIS CONNECTION THE SOVIET SIDE CANNOT AGREE WITH THE CONTENTS OF THE REPLY THE ALLIES MADE ON THE 16 JANUARY 1976 AND CONSIDER IT NECESSARY TO CONFIRM ITS POINT OF VIEW AS EXPRESSED ON THE 20 NOVEMBER 1975 WITH REGARD TO THE IRREGULAR DECISION OF THE WEST BERLIN ELECTORAL REVIEW COURT. END TEST.

2. IN RESPONSE CHAIRMAN LIAISON AND PROTOCOL OFFICER
MADD THREE POINTS RECOMMENDED REFTEL.

3. COMMENT:SOVIET EFFORT TO TELL US WHAT OUR OWN
KOMMANDATUA# LEGISLATION MEANS IS A BIT
PRESUMPTUOUS BUT THERE APPEAR TO BE NO NOVEL POINTS
IN STATEMENT.

WE CONSIDER THAT RESPONSE MADE BY CHAIRMAN LIAISON
AND PROTOCOL OFFICER DOES NOT REQUIRE ELABORATION.
FACT THAT SOVIETS DEESCALATED THEIR REBUTTAL FROM
POLAD-EMBASSY COUSELLOR LEVEL SUGGESTS THAT THEY
TOO WOULD NOT BE LOATH TO SEE AN END MADE TO THIS
PARTICULAR EXCHANGE.GEORGE

NOTE BY OC/T: #AS RECEIVED.

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